

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author:	<u>Perez</u>	Analyst:	<u>Jahna Alvarado</u>	Bill Number:	<u>AB 1139</u>
Related Bills:	<u>See Legislative History</u>	Telephone:	<u>845-5683</u>	Introduced and Amended dates:	<u>February 27, 2009, and April 13, 2009</u>
		Attorney:	<u>Patrick Kusiak</u>	Sponsor:	<u></u>

SUBJECT: Employer Hiring Credit/Enterprise Zone Qualified Wages/Certification Period**SUMMARY**

This bill would revise the Personal Income Tax Law (PITL) Enterprise Zone (EZ) Employer Hiring Credit and the Corporate Tax Law (CTL) Targeted Tax Area (TTA) Qualified Wages Credit.

SUMMARY OF AMENDMENTS

This bill as introduced on February 27, 2009, and amended on April 13, 2009, would revise the PITL EZ hiring credit and CTL TTA wages credit.

The April 13, 2009, amendments would do the following:

- Modify the definition of “qualified wages.”
- Modify the definition of “qualified employee.”
- Replace the modified definition of “ex-offender” with the definition under current law.
- Require an employer to request certification that an employee is a “qualified employee” within 21 days of the employee’s “commencement date of employment.”
- Require a certifying agency to deny a request for certification made later than 21 days after an employee’s “commencement date of employment.”
- Require a taxpayer claiming the hiring credit to file an annual report, as specified, with the certifying agency and allow the certifying agency to withhold certifications for newly hired employees for any taxpayer that has not filed the required annual report.
- Require a certifying agency to file an annual report with the state, as specified.
- Replace references to obsolete programs with references to the current programs.

PURPOSE OF THE BILL

According to the author’s office, the purpose of this bill is to enact meaningful reforms to the economic development area programs to ensure that the state maximizes its investment in the enterprise zone program through employer incentives that result in an increase in quality employment in economically challenged areas.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Department Director

Date

Selvi Stanislaus

06/03/09

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and would be specifically operative for taxable years beginning on or after January 1, 2010, with respect to vouchers for hiring credits issued on or after January 1, 2010.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

Amendments 1 through 14 are provided to correct technical errors.

ANALYSIS

FEDERAL/STATE LAW

Existing federal law provides for the existence of empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Under the Government Code, state law provides for several types of geographically targeted economic development areas (G-TEDAs): Enterprise Zones (EZs), Manufacturing Enhancement Areas (MEAs), Targeted Tax Areas (TTAs), and Local Agency Military Base Recovery Areas (LAMBRAs). Under the Revenue and Taxation Code (R&TC), existing state law provides special tax incentives for taxpayers conducting business activities within a G-TEDA. These incentives include a hiring credit, sales or use tax credit, business expense deduction, and special net operating loss treatment. Two additional incentives include net interest deduction for businesses that make loans to businesses within G-TEDAs and a tax credit for employees working in an EZ.

Hiring Credit: A business located in a G-TEDA is eligible for a hiring credit equal to a percentage of wages paid to qualified employees. A qualified employee must be hired after the area is designated as a G-TEDA and meet certain other criteria. At least 90 percent of the qualified employee's work must be directly related to a trade or business located in the G-TEDA and at least 50 percent of the employee's services must be performed inside the G-TEDA.

The credit is based on the lesser of the actual hourly wage paid or 150 percent of the current state minimum hourly wage (under special circumstances for the Long Beach EZ, the maximum is 202 percent of the minimum wage). The amount of the credit must be reduced by any other federal or state jobs tax credits, and the taxpayer's deduction for ordinary and necessary trade or business expenses must be reduced by the amount of the hiring credit. Certain criteria regarding who may be a qualified employee and certain limitations differ between the various G-TEDAs. Taxpayers operating in a G-TEDA are allowed the hiring credit for employing "qualified employees." "Qualified employees" for G-TEDAs are defined by reference to various state and federal public assistance programs. The categories of individuals considered qualified employees for the various G-TEDAs are substantially similar but not identical. A taxpayer located in a G-TEDA is allowed a credit of up to 50 percent of wages paid to "qualified employees" in the first year, decreasing by 10 percent each year thereafter. The taxpayer is required to obtain a voucher certificate for each of its "qualified employees." The voucher certificates are issued by the Employment Development Department (EDD) or the local (within the same G-TEDA as the workplace of the employee) agency familiar with the public assistance statutes.

Currently, EDD and the local entities that administer the Workforce Investment Act (WIA) and CalWorks have the authority to issue the voucher certificates. The voucher certificate indicates that the employee is qualified for or receiving any of the specified forms of public assistance and thus is a “qualified employee” for purposes of the hiring credit. Taxpayers that claim the hiring credit are asked to retain a copy of the voucher certificate for each of its “qualified employees.” Upon the request of FTB, the taxpayer is required to provide the voucher certificate for purposes of verifying the hiring credit claimed by the taxpayer.

For businesses operating inside and outside an economic development area, the amount of credit that may be claimed is limited by the amount of tax on income attributable to the economic development area. Income is first apportioned to California using the same formula as that used by all businesses that operate inside and outside the state (property, payroll, a double-weighted sales factor; for taxable years beginning on or after January 1, 2011, certain corporations may elect to use a single factor, 100 percent sales apportionment formula¹). This income is further apportioned to the economic development area using a two-factor formula based on the property and payroll of the business.

Corporate taxpayers who are members of a combined reporting group may make a one-time, irrevocable assignment of eligible credits, as defined, to an eligible assignee, as defined. Assigned credits can reduce tax for taxable years beginning on or after January 1, 2010.

THIS BILL

This bill would modify the tax credit for taxpayers subject to PITL that are engaged in a trade or business in an EZ for qualified wages paid to a qualified employee as specified.

This bill would modify the tax credit for taxpayers subject to CTL that are engaged in a trade or business, as defined, in a TTA for qualified wages paid to a qualified employee, as specified.

This bill would revise the percentage used to determine the maximum qualified wage, as defined, from 150 percent to an unspecified percentage. Additionally, this bill would revise the definition of “qualified wages” to include employees working 35 hours or more per week and who receive from the qualified employer 80 percent or more of the cost of health care coverage. For these employees, the maximum qualified wage for purposes of determining the allowable hiring credit would not exceed an unspecified percentage of the minimum wage, as defined.

This bill would remove from the definition of “qualified employee” individuals who reside in a targeted employment area under PITL and individuals who reside in a TTA under CTL.

This bill would require the “qualified employer” to request certification that an employee is a “qualified employee” from the certifying agency, as defined, within 21 days of the employee’s commencement date of employment. Requests for certification made more than 21 days after the commencement date of employment would be denied.

¹ ABX3 15 (Krekorian, Stats. 2009, Ch. 09X3-10)

This bill would require each taxpayer claiming the hiring credit to submit an annual report to the certifying entity providing the following information for each qualified employee:

- Total wages or compensation paid,
- Type of work performed,
- Length of employment, and
- Any benefits provided by the taxpayer.

This bill would allow a certifying agency to refuse to issue certifications for newly hired employees to any taxpayer that has failed to submit the annual report this bill would require.

This bill would also replace references to obsolete federal and state laws with references to the applicable successor laws.

This bill would apply to taxable years beginning on or after January 1, 2010, with respect to vouchers for the hiring credit issued on or after January 1, 2010.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses the undefined term "any benefits provided by the taxpayer". The absence of a definition for this term could result in taxpayer confusion. The author may wish to amend this bill to provide a definition of this term for clarification.

This bill would add to the definition of "qualified wages" wages paid to an employee who works at least 35 hours per week and whose employer provides at least 80 percent of the cost of health care coverage, as specified. Department staff lack expertise in health care coverage. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

This bill fails to specify the percentage of the minimum wage, which is the basis for the amount of hiring credit. Without specification, the department would be unable to administer this credit.

TECHNICAL CONSIDERATIONS

The department has identified the following technical concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill's PITL provision includes a reference to "qualified employer." The correct reference is "taxpayer." Amendment 1 is provided to correct this.

This bill refers to the "Employee Income Security Act of 1974." The correct reference is "Employer Retirement Income Security Act of 1974." Amendments 2 and 10 are provided to correct this.

This bill fails to define the "subdivision added by this bill that would apply to taxable years beginning on or after January 1, 2010, and applicable to vouchers issued on or after January 1, 2010." Amendments 5 and 13 are provided to correct this.

This bill uses the terms "certification" and "voucher" to refer to the same document. Amendments 6 and 14 are provided to correct this inconsistency.

This bill's CTL provision includes the terms "qualified taxpayer," "taxpayer," and "qualified employer" to refer to the same entity. Amendments 7 through 9, 11, and 12 are provided to correct this inconsistency.

This bill would modify the EZ hiring credit under the PITL and the TTA hiring credit under the CTL. If it is the author's intent to modify the EZ hiring credit under both the PITL and CTL, the bill should be amended to modify and refer to the CTL EZ hiring credit statute, R&TC section 23622.7.

This bill would modify the EZ hiring credit for taxpayers subject to the PITL and the TTA hiring credit for taxpayers subject to the CTL. If it is the author's intent to revise all G-TEDA hiring credits, the author may wish to amend this bill.

LEGISLATIVE HISTORY

SBX3 15 (Calderon, Stats. 2009, Ch. 09X3-17) allows a tax credit for a qualified employer in the amount of \$3,000 for each increase in a qualified full-time employee hired by a qualified employer in the taxable year, determined on an annual full-time equivalent basis.

AB 1398 (Arambula, 2007/2008) would have suspended the hiring credit offered separately under each G-TEDA and would have authorized one hiring credit for qualified taxpayers that hired qualified employees within the G-TEDAs. This bill failed to pass out of the first house by January 31 of the second year of the session.

AB 1550 (Arambula, Stats. 2006, Ch. 718) made various changes and reforms to existing law, among them defining G-TEDAs and allowing the Department of Housing & Community Development (DHCD) to backdate the effective date of the new zone to the date of the previous zone's expiration so the tax incentives remained in effect during the redesignation period.

AB 2926 (Nakano, 2003/2004) would have revised and expanded the qualifying process for the hiring credit in economic development areas (EDAs). AB 2926 failed to pass out of the Senate Committee on Housing and Community Development.

SB 1097 (Senate Budget Comm., Stats. 2004, Ch. 225) made various changes and reforms to existing law, among them authorizing DHCD to develop emergency regulations that would govern the issuance of voucher certificates by local governments and expanding the authority to issue voucher certificates for the EZ hiring credit to the local government administering the EZ.

SB 1876 (Alpert, 2003/2004) would have, among other things, created a Living Wage Opportunity and Revitalization Credit and repealed the EDA hiring credits. This bill failed to pass out of the first house by the constitutional deadline.

SB 1523 (Ashburn, 2003/2004) would have allowed a hiring credit to employers with fewer than 19 employees. This bill failed to pass out of the first house by the constitutional deadline.

AB 2365 (Correa, 2003/2004) would have allowed a tax credit for wages paid to a qualified employee who is hired in the taxpayer's manufacturing trade or business. This bill failed to pass out of the first house by the constitutional deadline.

AB 475 (Cogdill, 2001/2002) would have allowed a small business that is located in a qualified area a tax credit based on employees' wages. This bill failed passage in the Assembly Revenue and Taxation Committee.

AB 2895 (Committee on Revenue and Taxation, Stats. 2000, Ch. 864) amended the LAMBRA and the MEA hiring credit statutes to be consistent with the existing EZ and TTA statutes. Taxpayers are required to obtain a voucher for each newly hired employee, except with regard to the MEA hiring credit. No certification is required to claim the MEA hiring credit.

SB 2010 (Hurt, 1995/1996) would have allowed a tax credit equal to an unspecified percentage of qualified minimum wages that were paid or incurred by an employer. This bill failed passage in the Senate Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida allows businesses located in an EZ a tax credit based on wages paid to new employees. Other wage-based tax credits are offered to businesses that are located in high crime areas or in rural areas. Employers may earn job tax credits if hired employees reside in the designated EZ or a rural county. Up to 45 percent of an employee's wages may be claimed as a job tax credit. A business that files an amended return is not allowed any credit or carryforward in excess of the amount claimed on its original return for the tax year.

New York allows a wage credit to a business that hires a full time employee (either one in a targeted group or not) for a newly created job in an Empire Zone.

Illinois, Massachusetts, Michigan, and Minnesota do not offer a wage credit similar to California's EZ hiring credit.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved.

ECONOMIC IMPACT

Revenue Discussion

The revenue impact of this bill is determined by netting the revenue impact of the following:

- The revenue gain due to the elimination of EZ credits filed on amended returns,
- The revenue gain due to altering the definition of a qualified employee, by excluding the targeted employment area criterion,
- The revenue gain or loss due to changing the percentage for the minimum wage limitation for employers that provide health coverage as specified.

Because the percentage for the minimum wage limitation is unspecified, the revenue impact of this bill cannot be determined.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Jahna Alvarado
(916) 845-5683

Jahna.Alvarado@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375

Jay.Chamberlain@ftb.ca.gov

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521

Patrice.Gau-Johnson@ftb.ca.gov

Analyst	Jahna Alvarado
Telephone #	845-5683
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1139
As Amended April 13, 2009

AMENDMENT 1

On page 3, line 24 strikeout "qualified employer" and
insert:
taxpayer

AMENDMENT 2

On page 4, line 6, after "Employee" insert:
Retirement

AMENDMENT 3

On page 7, strikeout lines 23 through 26, inclusive.

AMENDMENT 4

On page 7, line 27, strikeout "(X)" and insert:
(IX)

AMENDMENT 5

On page 13, line 8, after "adding" insert:
this

AMENDMENT 6

On page 13, line 10, strikeout "vouchers for hiring credits" and insert:

certifications for hiring credits required by subdivision (c)

AMENDMENT 7

On page 13, line 36, strikeout "taxpayer" and insert:
qualified taxpayer

AMENDMENT 8

On page 13, line 38, strikeout "qualified employer" and insert:

qualified taxpayer

AMENDMENT 9

On page 13, line 39, strikeout "taxpayer" and insert:
qualified taxpayer

AMENDMENT 10

On page 14, line 20, after "Employee" insert:
Retirement

AMENDMENT 11

On page 23, line 27, strikeout "taxpayer" and insert:
qualified taxpayer

AMENDMENT 12

On page 23, line 28, strikeout "taxpayer" and insert:
qualified taxpayer

AMENDMENT 13

On page 24, line 1, after "adding" insert:
this

AMENDMENT 14

On page 24, line 3, strikeout "vouchers for hiring credits"
and insert:
certifications for hiring credits required by subdivision (c)